



School Building Authority of West Virginia
MASTER TASK ORDER AGREEMENT
FOR
“CONSTRUCTION MANAGEMENT AGENT SERVICES”
WITH
ATTACHMENT REQUIREMENTS

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ADVERTISEMENT AND EXPRESSION OF INTEREST
FOR
CONSTRUCTION MANAGEMENT SERVICES
FOR THE
SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA

The School Building Authority of West Virginia is seeking the services of qualified Professional Construction Management Firms to assist the agency with the management of statewide capital improvement projects including assisting the SBA with controlling the project budgets and providing agency construction management services during school design and construction phases.

The Construction Management firm or firms selected must have professional expertise with regards to; providing conceptual estimating, design phase cost estimating, budgeting and budgeting control, constructability reviews, construction oversight, project phasing and construction scheduling.

Submission requirements will be provided upon request to qualified firms by contacting Scott Raines, Director of Architectural Services, School Building Authority of West Virginia, Charleston, WV 25311, Phone: 304-558-2541 or email: scott.m.raines@wv.gov.

Inquires must be made by Insert Day and Date and Statements of Qualification (SOQ) must be returned to the School Building Authority office by Insert day and date to be considered.



School Building Authority of West Virginia
David A. Sneed, Executive Director

2300 Kanawha Boulevard, East • Charleston, West Virginia 25311-2306 • Office (304) 558-2541 • Fax (304) 558-2539

REQUEST FOR STATEMENT
OF
QUALIFICATIONS

CONSTRUCTION MANAGEMENT SERVICES



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SECTION I – INTRODUCTION

The School Building Authority of West Virginia (SBA) is inviting qualified firms to submit a Statement of Qualifications (SOQ) for providing Construction Management (CM) services for statewide school construction projects.

SECTION II – REQUEST FOR QUALIFICATIONS

Qualified construction management firms must submit a statement of qualifications to provide design phase and agency Construction Management services for projects assigned by the SBA in upcoming school construction funding cycles. The SBA will consider the qualifications of all submitting firms and will select one or more firms to enter into an agency CM services agreement with the most qualified firms to provide construction management services for large-scale projects funded by the SBA.

SECTION III – SCOPE OF SERVICES

The SBA desires to enter into a Master Task Order Agreement with a construction management firm(s) that will provide traditional Construction Management agent (CMa) services, as generally set forth in AIA Document C132. Additional services will also be required as assigned by the SBA (See Attachment). The CMa will be an extension of the SBA and activities relating to this contract will report directly to the SBA. The CMa will assist the SBA with budget validation, and budget tracking, the creation and compliance of the design and construction schedules, the performance of design and constructability reviews and document coordination and will work with the SBA. Project Architect and Grant Recipient throughout the design and construction phases to assure the projects are constructed in accordance with the programming needs of the facility and within the budget provided for the facility. All services must be performed by qualified professionals in collaboration with the SBA, Grant Recipient administrative staff and Project Architect. Services will be contracted on a per project basis and may be terminated for cause during the contract period and for convenience by the SBA at the conclusion of any projects.

To give perspective to the scope of work anticipated during this contract we are providing the following general information. This information is indicative of the past volume of construction and may or may not reflect the volume of future construction. The SBA awards approximately \$50,000,000 annually to County Boards of Education for the construction and renovations of K-12 schools statewide. County Boards of Education also provide annual local funding through the sale of bonds and the use of general revenue. These local funds annually provide approximate \$50,000,000 in additional construction funding. The SBA currently has active project totaling approximately \$300,000,000. The amount various and total annual design and construction volume has exceeded \$600,000,000 within the past five (5) years.

Individual projects assigned may vary in scope and cost but will generally be projects greater than \$10,000,000 in construction cost and will be delivered to multiple prime construction scenarios. These projects may be located in various regions of the state of West Virginia and will be assigned to the CM Agent by the SBA annually based on the number and types of projects funded by the SBA.

BASIC SERVICES – Design Phase Services by the CM shall Include:

- Provide CM advisor services as described in AIA Document C132-2009 and the SBA CM service responsibility (Attached)
- Provide Grant Recipient representation and advisor services to the SBA, Grant Recipient and architect regarding site evaluations including site preparation and development cost estimating proposed building sites
- Attend educational planning meetings at milestone dates to assist the SBA educational planner and Grant Recipient with cost and schedule expertise as needed during the project planning and programming phase
- Provide detailed independent cost estimating and knowledge of market conditions
- Provide project phasing, bidding, budget management as well as design schedule management in cooperation with the design architect
- Analyze the architect's designs throughout all phases and providing cost savings alternate systems evaluation and constructability studies
- Advise the SBA and Grant Recipient with regards to efficiency in project delivery
- Provide long-lead procurement studies and possible initiate procurement of long-lead items
- Assist in the permitting process
- Protect the SBA and Grant Recipient's sensitivity to quality, safety and environmental factors
- Assist with LEED design reviews
- Participate in Building Information Modeling (BIM) coordination and reviews

BASIC SERVICES – Construction Phase Services by the CM Shall Include:

- Provide CM advisor services as described in AIA Document C132-2009 the SBA CM services responsibility (Attached)
- Coordinate the creation of the Critical Path Method construction schedule with all prime contractors and maintain the schedule throughout the construction phase
- Coordinate with various Grant Recipient Departments and other agencies, utility companies and similar entities
- Attend all construction progress meetings representing the SBA and Grant Recipient's interests
- Attend Board meetings and provide the Grant Recipient construction progress reports
- Assist the Grant Recipient with procurement of materials and equipment
- Schedule and manage site operations
- Bidding, recommending, award and managing all construction related contracts and subcontracts while meeting the SBA and Grant Recipient bidding requirements
- Provide quality controls
- Oversee bonding of contractors for the construction in accordance with SBA and Grant Recipient requirements
- Assist with all federal, state and local permit requirements
- Assist the Grant Recipient with issues including public information, safety and traffic issues
- Review all contractor's worksite safety plans
- Make all adjustments to the construction schedules needed to maintain a current schedule reflecting accurate construction progress throughout the project
- Record all construction delays, provide Grant Recipient support for construction delay claims
- Coordinate the placement of loose furniture and equipment with the construction schedule as areas of the building are released for occupancy
- Track all project costs and maintain a comprehensive project budget
- Assist the SBA and Grant Recipient with final closeout requirements
- Participate in project BIM activities based on project requirements
-

ADDITIONAL SERVICES:

Should the SBA authorize additional services beyond the Basic Service, compensation will be negotiated based on accepted hourly rates with the SBA/CM Agent Master Task Order Agreement.

SECTION IV – STATEMENT OF QUALIFICATIONS

The CMa is selected through a qualifications-based selection process. Firms interested in providing Construction Management services must submit a Statement of Qualifications (SOQ) that follows the outline of required information and addresses the following issues:

A. General Organization

(10 Points)

1. Provide a general description of the firm that is proposing to provide construction management services. Explain the legal organization of the proposed firm.
2. Provide an organizational chart showing numbers and types of key personnel available to perform SBA CM services.
3. Identify any sub-consultants that will provide the services required.
4. Provide assurances that if selected to perform these services you will provide a qualified certificate of insurance. (limits will be defined by the SBA)

B. Project Management Experience

(25 Points)

1. Identify at least three comparable projects in which the firm served as agency Construction Manager during design and construction phases. For each comparable Project identified, provide the following information using the outline provided:
 - a. Description of projects
 - b. Specify services provided
 - c. Construction dates
 - d. Project Owner
 - e. Owner contact information (Names and Telephone Numbers for each project)
2. List of all projects where the firm provided agency construction management services in the last five (5) years either completed or on going.
3. Describe experience with SBA projects and list completed or on-going projects
4. Describe the firm's knowledge and experience with SBA Policies and Procedures.
5. Describe the firm's knowledge and experience with SBA Quality and Performance Standards.
6. Provide historic cost estimating data for projects you have provided services on over the past five (5) years to demonstrate your ability to provide accurate cost estimates within the school construction market in general and particularly with the West Virginia School Construction Market.

C. Key Personnel Qualifications

(25 Points)

1. Provide a list of all key personnel who will be assigned to these projects and describe the roll each key personnel will be playing in the projects assigned.
2. List key persons that will be assigned to this project that are:
 - a. Certified Construction Managers
 - b. Construction Claims Specialists (CCS)

- c. LEED AP professionals with the U.S. Green Building Council certifications.
 - d. Experienced on projects where Building Information Modeling (BIM) is being employed throughout the design and construction of the building.
 - e. Experienced with the creation of construction phasing plans for occupied facilities.
3. List any proposed consultants that may be performing key personnel duties.

D. Project Approach and Understanding (15 Points)

- 1. Describe your firm's project management approach and services during the project development, design and the construction phases.
- 2. Describe your firm's project management systems and software used for scheduling, estimating, budget tracking and managing construction.
- 3. Briefly describe the firm's experience on quality control dispute resolution and safety management.

E. Firm Performance/Resources (10 Points)

Describe your firm's commitment of resources to the project assigned. Assume multiple projects progressing at the same time that may be in different phases of development.

- 1. Describe your firm's strategies for managing multiple projects progressing at the same time.
- 2. List the key members of your team that may be engaged in each phase of the projects.
- 3. Provide a management structure for each project assigned.

F. References (15 Points)

Provide reference letters from previous projects from the Owner or Owner's representative, **Directly responsible for oversight of the project.** These references must be attached to the SOQ Tabbed as section "F".

The Review Committee will provide overall evaluations of the firm and its perceived ability to provide the services required. The Review Committee will review the individual evaluations scores and establish a consensus score for each firm. The firms with the highest consensus scores will be considered for contract negotiation.

SECTION V – SUBMITTAL REQUIREMENTS

Firms interested in the above project shall submit:

- 1. A cover letter expressing interest in performing services described within the SOQ
- 2. A Statement of Qualifications following the outline describing the content of the SOQ, **Which is a maximum length of twenty (20) pages of at least twelve (12) point font? to Address the SOQ criteria (excluding cover letter and resumes, but including the Organizational chart).**
- 3. Resumes for each key team member (limited to a maximum length of two (2) pages each) and attached as an appendix to the SOQ.
- 4. Previous project reference letters attached as an appendix to the SOQ.

Please provide **one (1) original and four (4) copies of the SOQs, total of five (5); on or before the time and date listed below in the schedule under Section VI of this SOQ.**

On the submittal package, please display: firm name and project: **“School Building Authority of West Virginia – Statement of Qualification for Construction Management Services”.**

Please be advised that the failure to comply with the following criteria will be grounds for disqualification and is strictly enforced:

- Receipt of submittal after the specified cut-off date, time and place
- Failure to provide the correct number of originals and/or copies of the submittal specified
- Submission of electronic copies only of the submittals

Adherence to the maximum twenty (20) page criteria is critical; each page size (maximum of 8½” by 11”) with criteria information will be counted. Pages that have project photos, charts and graphs; will be counted towards maximum number of pages. The SBA reserves the right to accept or reject SOQ that exceed the maximum, twenty (20) page limit.

To request a copy of the “Statement of Qualification Requirements Contact” contact:

Insert Name, Title and Address of person receiving proposals

Phone: 304- -

Email Address:

Interested firms may submit their qualification in a bound format tabbed with individual sections of the proposal matching the outline of the SOQ. Submit proposals to:

Insert Name, Title and Address of person receiving proposals

SECTION VI – TENTATIVE SCHEDULE AND FEE NEGOTIATIONS

A Selection Committee will evaluate each SOQ according to the above criteria. One or more firms may be selected to perform CM services. The following tentative schedule has been prepared for this project:

ANTICIPATED SCHEDULE

Advertisement
Expression of Interest
Last Day to Address Questions
Statement of Qualifications Due
Interviews
Selection of Firm(s)
SBA Authority Approval of Firm(s)
Execution of Contract

The SBA will enter into a Master Task Order Service Agreement Contract with one or more qualified firms. The CM(s) will be selected based on their qualifications and expertise as presented in the SOQ and the interview process. The selected firms will represent the SBA and report directly to the SBA as their primary point of contact. Once selections are made, the SBA will establish a scope of work for each project and the CM(s) will provide a detailed estimate of cost to perform the services based on the project requirements.

SECTION VI – GENERAL INFORMATION

Instructions: The SBA shall not be held responsible for any oral instructions. Any changes to this Statement of Qualifications will be in the form of an addendum, which will be furnished to all registered Request for Qualifications holders.

Contract: The Master Task Order Agreement will be executed between the SBA and the selected Construction Manager(s) that establishes the individual project services and the contractual relationship with the SBA and the CMA. A modified AIA Document C132-2009 (CMA), (compatible with CMA design and construction documents) will then be executed between the Grant Recipient or other state agency and the Construction Manager for individual project services.

Allowable Costs for Contracted Service: Fees for services will be reviewed and approval by the SBA and be based on the individual project services required by the SBA.

Owner's Rights: The SBA reserves the right to accept or reject any or all SOQs, to waive any informality or irregularity in any SOQ received, and to be the sole judge of the merits of the respective SOQs received.

Contact with SBA: All firms interested in this project, (including the firm's employees, representatives, agents, lobbyists, attorneys and sub-consultants), will refrain under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process, with any person who may play a part in the selection process, including but not limited to, the evaluation panel, the SBA Board and other staff members. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public and to protect the integrity of the selection process. All contact during this selection process must be addressed to the authorized representative identified below.

QUESTIONS: All questions pertaining to the Construction Manager selection process or contract issues must be directed to:

Angie Bradley

This concludes the Statement of Qualifications for the Construction Manager Agent for the School Building Authority of West Virginia.

Selection Team Rating Sheet			
Construction Manage			
(Project Name)			
Company/Firm			
Evaluation Criteria	Criteria Value Potential	Actual Score	Remarks
A. General Organization	10		
B. Project Management Experience	25		
Comparable Project Experience (5)			
5 Year History of CM Services (5)			
Familiarity with SBA Requirements (5)			
Familiarity with SBA			
Quality and Performance Standards. (5)			
Historic Estimating Experience (5)			
C. Key Personnel Qualifications	25		
Certified CM (5)			
Construction Claims Specialist (5)			
LEED AP (5)			
BIM (5)			
Construction Phasing (5)			
D. Project Approach and Understanding	15		
E. Firm's Performance/Resources	10		
F. References	15		
Grand Total (possible points)	100		(must score a minimum of 70 points to be considered)
Comments:			

**THE SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA
MASTER TASK ORDER AGREEMENT
FOR
“CONSTRUCTION MANAGEMENT AGENT SERVICES”**

THIS TASK ORDER AGREEMENT, entered into as of _____, by and between the School Building Authority of West Virginia, whose business is 2300 Kanawha Boulevard, East, Charleston, West Virginia 25311, and hereinafter called SBA and the Construction Manager Agent herein called CMa whose business address is:

WHEREAS, the SBA seeks, and the CMa has offered to provide Construction Management Agent Services, as hereinafter defined in **Attachment “A”** (Scope of Services).

WHEREAS, _____ agrees to apply their professional skill and judgment consistent with the needs of the SBA; and

NOW THEREFORE, the parties hereto do mutually agree as follows:

1. Contract with CMa

- (a) The SBA hereby agrees to engage the CMa and the CMa hereby agrees to provide Pre-Design, Design and Construction Phase Services as assigned by the SBA via the individual task order agreement with all applicable federal, state and local laws and regulations to which the SBA, the CMa; the Grant Recipient and their respective employees, hereinafter called the Grant Recipient, are subject. The contract term is thirty-six (36) months with two (2) one-year options.
- (b) All task orders issued under this required contract shall incorporate, by reference, all terms and conditions described herein and made a part of each task order. The special Provisions (**Attachment “E”**) are incorporated herein and made part of this contract.
- (c) The CMa shall be an extension of the SBA and report evaluations and recommendations directly to the SBA and the Grant Recipient. The SBA shall identify individual project Services based on the various tasks deemed necessary by the SBA for each project. Project specific services will be assigned through the SBA Master Task Order Agreement.
- (d) The CMa will be contracted for services through this Master Task Order Agreement, assigned projects by the SBA and will enter into a contract for project specific services, as determined by the SBA with the grant recipient. The scope of the services will be defined by the SBA in accordance with this Master Task Order Agreement. “The Contract for Project Specific Services”, will be executed between the CMa and the Grant recipient. The contract form shall be the Standard Form of Agreement between the Grant recipient and the Construction Manger as an agent and shall be AIA C132-2009 version or other approved contract form required by the SBA.

2. Scope of Service

- (a) The CMa shall do, perform and carry out in a satisfactory, proper and timely manner the Services as set forth in **Attachment “A”** (Scope of Services) attached hereto and as issued by way of individual task orders.
- (b) The CMa shall perform its Services under the direction of the SBA Director of Architectural Services or his/her appointed designee, to whom all reports and submittals shall be addressed.
- (c) Any inconsistency in the interpretation of this contract shall be resolved by giving precedence in the following order. (A) The Scope of Service (B) the Director of Architectural Services and (C) the Executive Director of the SBA.

3. Data to be Furnished to the CMa

The SBA shall provide the CMa with such access to its records, files and personnel as may be reasonably necessary for the performance of the Services. Data located at the County level will be provided by the Grant Recipient as directed by the SBA.

4. Key Personnel

The CMa represents that it has or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the SBA. All of the services required hereunder will be performed by the CMa or by the sub-consultants under its supervision, with the prior approval of the SBA, and all personnel engaged in the work shall be fully qualified to perform such service.

NOTES: Sub-consultants identified at the time of Agreement execution shall be listed in **Attachment “B”**; said sub-consultants could be engineers (geotechnical, civil, structural, mechanical, electrical, plumbing, fire protection, Commissioning BIM coordinators, etc.), abatement consultant or others working as sub-consultant to CMa that may be deemed necessary to complete the scope of services as requested by the SBA.

In performing the services required under this Agreement, the CMa shall provide key personnel in accordance with **Attachment “B”** of this Agreement. Changes in these assignments with respect to either person or positions shall not be made without written notification and approval by the SBA.

5. Compensation

- (a) The SBA shall utilize project funds to compensate the CMa in the sum agreed upon for each individual task order that may be issued against this contract. The CMa reimbursement shall be through the Grant recipient as directed by the SBA. The CMa will be paid upon delivery of completed work for each phase of the task order assigned. For large work efforts, progress payments will be made based on the CMa's progress and agreed upon percentage of completion of each individual task order. If no task orders are issued against this contract, there will be no compensation made to the CMa as detailed in the Special Provisions **Attachment “D”**. The negotiated and agreed upon labor rates to be used in issuance of task orders and as detailed for the

terms of the agreement are incorporated herein as **Attachment “E”**. The labor rates shall remain constant for each project but may be adjusted for future projects assigned at a rate no greater than 3% yearly increase as or as agreeable by the SBA.

The SBA is exempt from all State, excise and transportation taxes, and all rates and prices hereunder shall be construed as exclusive of such taxes. All other taxes and governmental impositions upon the Services, including labor and materials, furnished hereunder shall be paid by the CMa.

- (b) Each invoice submitted shall identify the funding authorization project number, issued by the SBA, assigned to this contract. Invoices submitted shall be as per the project Task Order and phased based on the specific project agreement. Upon demand the SBA may request complete expense back-up of specific services performed, the individual (if a key employee) or classification of personnel utilized and the time expended by each, and the rate associated therewith. The CMa shall include in each invoice amount(s) properly due to sub-consultants, which are properly and timely submitted by them.
- (c) If the SBA receives invoices for payment by the fifth (5th) of the month, payment will generally be made within thirty (30) days following approval of each invoice. Such approval or payment shall not constitute acceptance or approval of the services invoiced. Late payments shall accrue no interest. Within ten (10) days after receiving payment from the SBA, CMa shall pay each sub-consultant all amounts due and invoiced pursuant to paragraph 5 (b) above
- (d) Final payment shall be made only upon satisfactory completion of the entire scope of services.

6. Terms of Agreement

The effective date of this agreement shall be the date of its execution by the SBA. The services of the CMa are to commence upon the effective date of the Notice to Proceed of each task order and shall be undertaken and completed in the sequence required to accomplish the tasks described in **Attachment “A”** (Scope of Services). These Services shall continue until all tasks have been completed and accepted by the SBA.

7. Assignability

The CMa shall not assign any interest in the Agreement, and shall not transfer any interest, direct or indirect, to any firm, company, corporation, entity, person, public or quasi-public body, agency or the like, including the SBA, which could conflict in any manner or degree with the performance of services required to be performed under the Agreement. Any other assignment of interests under this contract shall require prior written approval of the SBA.

8. **Findings Confidential**

All reports, information, data, etc., given to, prepared or assembled by the CMa under this Agreement shall be made available to the SBA. All news release or other public information relating to projects assigned and relating to the SBA or the contents of the Scope of Services, contained in this Agreement must have prior approval of the SBA.

9. **Prohibited Interests**

No Member, officer employee or agent, of the SBA during his or her tenure or one year thereafter shall have any interest, direct, or indirect in this Agreement or the proceeds thereof. Nor shall anyone who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the objectives of this agreement have any personal or financial interest, direct or indirect in this Agreement or in any person, corporation, partnership, association or other entity, which performs any of the obligations under this Agreement.

10. **Publication, Reproduction and Use of Materials**

No materials produced in whole or in part under this Agreement shall be subject to copyright. The SBA and Grant Recipient shall have unrestricted rights to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared and generated under this Agreement, and all such materials shall be turned over to the SBA at completion of the Services in an orderly and organized condition.

11. **Hold Harmless**

The CMa shall be responsible for the professional quality, technical accuracy and coordination of all Services by the CMa under this Agreement. Neither the SBA's review, nor payment for any of the Services required under this Agreement is construed to operate as a waiver of any cause of action arising out of the negligent or wrongful performance of this Agreement. The CMa shall be and remain liable to the SBA in accordance with applicable law and shall indemnify and save harmless the SBA from claims, suits, actions, damages and cost of every name and description to the extent resulting from the negligent performance of the Services of the CMa under this Agreement.

12. **Indemnification and Insurance**

- (a) To the fullest extent by law and the contract for services, the CMa shall, at its sole cost and expense indemnify, defend and satisfy all judgments, and hold the Grant Recipient and the SBA, including its Trustees, officers, employees, agents, servants and representative, harmless from and against any and all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses; including but not limited to attorney's fees and worker's compensation benefits arising out of or resulting from the performance of this Agreement, providing that such claim, action, judgment, cost, penalty, liability, damage, loss or expense is caused in whole or in part by the negligence or professional error or omission of the CMa or a person directly or indirectly employed by it, including but not limited to sub-consultants of every tier

and their employees. Such obligation shall not negate, abridge or otherwise diminish or limit any right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

- (b) The CMA shall obtain at its own expense insurance in amounts and coverage not less than those shown in the **Attachment "C"** hereto, and shall maintain such insurance in full force and effect during the term of this contract, including any extensions thereof. The CMA shall purchase and maintain Comprehensive General Liability, Compensatory Auto Liability, Professional Liability and any other coverage requested in the solicitation package. The policies shall name SBA as an additional insured. The SBA does not represent that the coverage and amount shown are sufficient or adequate to protect the interests of the CMA and the specified insurances are not intended to limit the CMA liability with respect to any matter covered thereunder.
- (c) The CAA shall comply in full with the West Virginia Worker's Compensation requirements and any comparable laws in other states where Services are performed hereunder, and shall pay necessary premiums as required to cover all employees furnishing labor hereunder. The CMA shall indemnify the SBA and hold it harmless from any costs arising from CMA's liabilities under said requirements.
- (d) The CMA shall not commence its services hereunder until it has obtained all insurance required hereunder, and furnished satisfactory proof thereof to the SBA for each project assigned. The policies for all such insurances shall provide that the SBA's Director of Architectural Services shall receive not less than thirty (30) days written notice prior to the cancellation or alteration of any policy or coverage. All such insurance shall be obtained from companies licensed to provide such insurance in the State of West Virginia, which have an A.M. Best A- or better rated surety company listed on the most current Federal register circular five (5) or better rating from A.M. Best Company.

13. **Audits and Inspections**

The CMA shall maintain books, records, documents, and other evidence directly pertinent to the performance of the Services under this contract in accordance with generally accepted accounting principles and practices consistently applied. The CMA shall also maintain the financial information and data used by it in the preparation or support of the cost submissions and project management required for this contract, or any change order or claim, summary submitted to the SBA. The SBA and the state government or their authorized representative shall have access at all times during normal business hours to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The CMA shall provide facilities for such access and inspection. The rights granted the SBA and the government under this provision shall remain in full force and effect for three (3) years after termination of this contract for whatever reason and shall extend to any sub-contractor performing work valued in excess of ten thousand dollars (\$10,000.00).

14. Changes in Scope of Services and Time of Performance

The SBA, shall at any time, during the life of this agreement require changes in the Scope of Service or the Schedule hereunder. Only the Director of Architectural Services, or his designee, may request a proposal, negotiate, and make equitable adjustment in the (1) price, delivery or completion schedule, or both (2) profit and other affected terms and shall modify the contract to incorporate and mutual written agreement of the parties.

15. Termination for Convenience

The performance of work under this contract may be terminated by the SBA in accordance with this clause in whole or from time to time in part, whenever the SBA shall determine that such termination is for the convenience of the SBA. Termination shall be effected by delivery to the CMa of a notice of termination specifying the extent to which performance of work under the contract is terminated and the effective date thereof. In the event of a termination for convenience, the SBA reserves the right to take possession of all project data collected up to the date of termination. In the event of such termination the contract sum will be equitably adjusted by paying the CMa its reasonably incurred costs for individual task order services (including overhead and profit) provided through the date of termination. This amount will be mutually agreed upon and based on completed phases of work. Payments for partially completed phases of work or lost profits will not be reimbursed.

16. Termination for Default

The SBA may by written notice of default to the CMa terminate the whole or any part of this contract if the CMa fails to make delivery of the materials or to perform the services within the time specified herein or any extension thereof; or if the CMa fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days, (or such longer period as the Director of Architectural Services or his designee may authorize in writing) after receipt of written notice from the Director of Architectural Services or his designee specifying such failure.

17. Equal Employment Opportunity

- (a) The CMa will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The CMa will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or nation origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; advertising of recruitment layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CMa agrees to post in places available to employees and applicants for employment.
- (b) The CMa will, in all solicitation advertisements for employees placed by or on behalf of the CMa state that all employment is without regard to race, color, religion, sex or national origin.

18. **Required Provisions Deemed Inserted**

Every clause required by Federal or State statute or regulation to be inserted in this Agreement is deemed to be inserted herein and this Contract shall be read and enforced as though it were included herein. If through mistake or otherwise such provision is not inserted, or is not correctly inserted then upon application of either party the Agreement shall forthwith be amended to make such insertion or correction.

19. **Covenant Against Contingent Fees**

The CMA warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for an employee or bona fide established commercial selling agency maintained by the CMA for the purpose of securing business. For each breach or violation of this warranty, the SBA shall have the right to annul this contract without liability or at its discretion commission, percentage, brokerage or contingent fees.

20. **Social Security Act**

The CMA shall be and remain an independent contractor with respect to all Services performed hereunder and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance or old age retirement benefits, pensions or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by the CMA for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are not or hereafter may be issued or promulgated under said respective laws by all duly authorized state or federal officials, and said CMA.

ATTACHMENT “A”

PART TWO – SCOPE OF SERVICES

I. Professional Services of the Construction Management Agent, General

The following is a description of the professional services of the Construction Management Agent (CMa). The CMa will be responsible for performing construction management services on assigned SBA projects. The CMa will be an extension of the SBA and report evaluations and recommendations directly to the SBA and Grant Recipient. The CMa contract responsibilities will be assigned by the SBA based on the Master Task Order Agreement for each project. Reimbursement shall be directly through the Grant Recipient utilizing SBA Grant funds and local funding as contracted to the SBA within the SBA/County Grant Contract.

The SBA requires services as listed on the “Summary of County, Architect and CMa Contract Services Responsibilities” (SBA Form _____). These services include but may not be limited to those tasks where the CMa is the originator of the task acts, as the conductor, preparer, and a scheduler of a project task. For tasks that are not the direct responsibility of the CMa, the CMa will be assisting, advising, and participating and providing input or review/comments, on other project activities. The direct responsibility for completion of these tasks will be by others. Should the SBA require the CMa to accept responsibilities as the originator of the tasks assigned on the SBA Form _____ to other parties, the SBA will compensate the CMa for these additional services.

1. Site Evaluation / Selection

The CMa will be assigned project responsibilities once the projects are selected by the SBA. The CMa may be requested to provide limited services during the site evaluation and selection process. Should service be required prior to the project being assigned, compensation for these services will be reviewed and considered once the project is funded by the SBA. Examples of these services would be conceptual estimates and preliminary site development or site preparation costs.

The CMa will provide services as defined in the SBA summary of the County, Architect and CMa Contract services responsibilities, “Matrix” as basic services once the project is funded and assigned to the CMa.

2. Planning Phase

The CMa will have limited responsibilities during this phase of the projects assigned. The CMa will have direct responsibilities for coordinating and originating the project master schedule including the design and construction schedules. This schedule will also incorporate the SBA Project Development Schedule requirements defined in the Project Grant Contract.

The CMa will create and maintain the Project Budget and provide input during the planning phase concerning “Scope Creep” and the effects on the budget if the project exceeds the allowable square footage.

The CMa will assist the Grant Recipient and Architect/Engineer with the creation of RFP’s for all project testing and inspections, Asbestos Consultants, Building Commissioning and other services required for the project.

The CMa will conduct and record minutes for monthly Project Coordination Meetings occurring during this and other phases of the project.

The CMa will provide remaining services during the planning phase of the Project Development as defined in the Contract Services Responsibilities Matrix in an advisory role or as defined in the Matrix.

3. Constructability Review

- a. The CMA will review with the Grant Recipient, SBA and Architect at the Schematic Design Phase the building efficiencies, anticipated construction type and materials, project Scope and budget.
- b. CMA will review with the SBA and architect at the Design Development Phase alternative design and construction materials as they relate to the project requirements, budget and schedule.
- c. CMA will review construction drawings and specifications based on Construction Documents (CD) and make oral and written recommendations regarding constructability of the design.
- d. CMA will evaluate design completeness at the bidding document phase and report to the SBA on the Architect's progress toward completion of the bidding documents with all CMA and SBA comments addressed prior to bidding.
- e. CMA will advise and assist the SBA and architect(s) in the selection of the best quality, economical materials and systems for all facets of the project.
- f. If the project is designed as a United States Green Building Certified (USGBC) project, the CMA shall be knowledgeable of USGBC certification requirements and the costs to achieve LEED certification to assist the team in reaching such certification.
- g. The CMA will participate in the creation of a clash free model documents of the building design for distribution to all bidders for projects requiring building information modeling as the Basis of Design. Building information modeling requirements will be established for projects based on the SBA statewide and SBA project specific requirements identified by the SBA.

4. Discipline Coordination

The CMA will review documents to insure proper integration of architectural, structural, civil, mechanical, plumbing and electrical disciplines. The CMA will provide review document comments to the SBA and this review will be incorporated into the SBA review comments and then communicated to the Architect/Engineer.

- a. If (as an optional service) the SBA requires a project construction Phasing Plan the Agent will begin coordination of the phasing plan with the SBA, Architect and Grant Recipient at the schematic phase of the project.
- b. If the project is designed using a fully integrated Building Information Modeling (BIM) approach, the Agent will provide technical coordination assistance to the Grant Recipient and SBA during all phases of the design and construction.

5. Construction Cost Estimation

- a. The CMA will review with the SBA and Architect; the SBA's Quality and Performance Criteria at the Schematic Phase and suggest alternative design and construction materials as they relate to the project requirements, budget and schedule. The CMA will provide a cost-to-benefits report on desired building components that exceed the SBA Quality and Performance criteria standards and other design elements that are determined by the SBA, architect and agent to be moving the project cost above the established budget.

- b. The CMa will provide estimating services through the pre-construction phases to evaluate costs as they relate to the overall budget established for the project and provide alternative design and construction materials for each project if adjustments to the scope of work or budget are required.
- c. The CMa will be responsible for providing phase estimates to the SBA, Grant Recipient and the Architect on a timely basis. The schedule will be established by the SBA for each project based upon the complexity of the project. It will be expected that the complete cost estimates will be prepared within ten (10) business days unless otherwise noted in the task order.
- d. The CMa, upon SBA and /or Grant Recipient may be requested to provide estimating services to establish budgetary information for a Grant Recipient who plans to pursue future SBA funding for their proposed project. The agent shall coordinate with the SBA, Grant Recipient and Grant Recipient's Design Firm (if under contract) to clearly define the program and budgetary cost. The Agent shall produce sufficient estimating details such that the scope of the project can clearly be ascertained from the program estimate document. The CMa reimbursement for Conceptual Services requested by the Grant Recipient may be provided through the Grant Contract once approved or directly through the Grant Recipient.

6. Construction Scheduling

- a. The CMa will be responsible for providing a Milestone Construction schedule for all projects where multiple prime bidding is used.
- b. The CMa will provide bidding language for the bidding documents that establishes requirements for the creation and maintenance of the CPM construction schedule for the project.
- c. The CMa will coordinate the creation of the construction schedule with all prime contractors to ensure the construction schedule is in place in accordance with the SBA Policy and SBA Supplemental Conditions.
- d. The CMa will review the final construction schedule and ensure that all prime contractors agree and sign-off on the schedule in accordance with SBA policy.
- e. The CMa will attend monthly project meetings for the purpose of reviewing the progress on the project, advising the SBA and the Grant Recipient of the contractor's compliance with the schedule and advising the SBA and the Grant Recipient of deviation in the work being performed that is not following the schedule approved for the project.
- f. The CMa will require updates to the CPM schedule from the contractors if the project schedule is altered by a change order. Additionally, the CMa shall identify the contractor(s) that are deviating from the agreed upon construction schedule or sequence of work and recommend corrective action.

7. Construction Phasing Plan-Optional Service

- a. Upon request by the SBA, the CMa shall provide a construction Phasing Plan for projects where students and staff will be present during construction and they are being moved from areas of the building where construction is disrupting their school day.
- b. The CMa will provide supplemental bidding specifications language that requires the contractors to comply with the Phasing Plan.
- c. Should the construction Phasing Plan require alteration as construction progresses, the CMa will coordinate changes with the Grant Recipient and advise the Grant Recipient

and SBA regarding the need for any construction change order needed to effectuate the change.

8. Building Information Modeling (BIM) – Optional Services

Should the Grant Recipient or the SBA require BIM for the project, the CMa will assist and coordinate the requirements for the bidding documents as they relate to the specific needs of the project.

II. Pre-Construction Services of the CAA

1. Schematic Design Phase

- a. The CMa Pre-Construction Services will begin at the Schematic Design Phase of the project. However, each project will be evaluated individually with regards to the scope of services required. Schematic Design Phase services include a review of the proposed budget, the educational planning document as it relates to the spaces designed, the quality and performance standards established for the project, first estimate of probable cost and providing site development estimates of probable costs.
- b. If BIM and/or Project Construction Phasing are required by the project agreement, the CMa will assist the Grant Recipient and SBA beginning at the schematic phase of the project with regards to the incorporation of these elements into the project.
- c. The CMa shall also participate in project activities as described in the summary of Grant Recipient, architect and CMa contract services responsibility Matrix.

2. Design Development Phase

- a. The CMa will review project information, the scope of work and quality and performance standards established at the schematic phase, the establish budget and funding sources prior to preparation of Design Development estimate. Projects where the SBA requires project construction phasing and/or BIM the Agent will provide additional coordination assistance to the Grant Recipient and the Architect during this phase of the design.
- b. The CMa will prepare a detailed cost estimate based on the Design Development Phase documents and report results to the SBA and the Grant Recipient. The CMa is responsible for development of an overall project cost based on Design costs, Construction Management costs, Bidding costs, Construction costs, reasonable contingencies for design, construction unknowns and all other soft costs.
- c. The CMa will establish estimates in an SBA approved electronic format for site work. Architectural/Engineering systems (foundations, structural, interior/exterior building systems and electrical systems, etc.) mechanical and electrical systems based on the format established for the project.
- d. Upon completion of the review, CMa will provide cost savings recommendations regarding alternate proposals, when applicable, on the constructability of the design, alternative materials and construction methods to SBA and the Grant Recipient that will reduce the project costs.
- e. The CMa shall also participate in project activities as described in the summary of Grant Recipient, Architect and CMa Contract Services responsibility Matrix.

3. Contract Document Phase

The CMA will provide contract document reviews and report the following information to the SBA, Grant Recipient and Architect for review and use:

- a. Final estimates at 95% completion of Contract Documents.
- b. The CMA will provide Bidding Document Milestone Construction Schedule and Supplemental Conditions regarding the CPM Construction Schedule requirements for the project.
- c. The CMA will provide a review of the Documents and provide recommendations to the SBA, Grant Recipient and Architect for items that require further discipline coordination requirements.
- d. The CMA will provide a review of each disciplines scope of work to assist the design firm with a bid document assignment of work and provide recommendations for revisions that will avoid overlap of contractor responsibility, the purpose of this review is to provide a coordinated bidding and construction document to all bidders.
- e. The CMA will provide constructability reviews to provide cost-savings recommendations with regard to the building construction design details and to identify conflicts between design details.
- f. The CMA will provide bidding Document supplemental language for Project Construction Phasing and BIM when required by the SBA or Grant Recipient.
- g. If BIM is utilized on the project, the CMA shall participate in a design and construction details coordination meeting that produces a clash free design model. A joint clash detection review will be performed by, the architect/engineer and construction manager.
- h. The CMA shall also participate in project activities as described in the summary of Grant Recipient, architect and CM contract services responsibility Matrix.

4. Bidding Document Phase

- a. The CMA will analyze the bidding market prior to advertisement of the project and make recommendations with regard to quality and quantity of potential bidders.
- b. The agent in cooperation with the SBA and Grant Recipient will analyze the Building Design building conditions and design estimate to determine the most appropriate bidding scenario including base bid and alternate pricing.
- c. Should the lowest qualified bids received exceed the construction budget; the CMA will be responsible for making recommendations to bring the project within the approved budget.

5. Construction Phase

- a. **Construction Schedule Requirements** – Once bids are awarded, the CMA will conduct a coordination meeting with input from all Prime Contractors and prepare a CPM construction schedule for review and approval by the prime contractors. To avoid delay claims and possible Grant Recipient delay penalties the schedule shall be in place in accordance with the SBA policy requirements for the project prior to the 2nd pay application or as directed by the SBA.

- b. **Construction Phasing Plan** – The CMA may be required to develop a phasing of construction activities for projects requiring a detailed phasing plan within the bidding documents. The Phasing Plan will be established to coordinate building occupant safety and to minimize daily disruption of occupied facilities during construction.
- c. **Construction Phase Schedule Maintenance and Reporting** – The CMA shall be required to attend monthly project meetings to review the schedule, maintain the schedule and provide the Grant Recipient and SBA support for delays by prime contractors claims that may be filed relating to the construction schedule.
- d. The CMA shall take immediate action, with regards to enforcement of the schedule by all Prime contractors. Delays in the critical path shall be addressed, offending contractors causing delays shall be notified, and a remediation and recover schedule shall be in place within twenty-one (21) days of notification.
- e. The CMA shall perform all construction phase activities as assigned by CMA standard form of agreement and the SBA supplemental conditions.

TASK ORDERS

The SBA shall initiate the Services for each project via task order agreements to the CMA as described in the Agreement. The CMA shall be an extension of the SBA, and communicate and report directly to the SBA. Services defined within this document will be provided based on the “Scope of Services” defined within this document and the summary of Grant Recipient, Architect and CMA contract services responsibilities Matrix. (Attached)

When services are needed, the SBA will develop a task description and request that the CMA submit a proposal based on the rates agreed upon in the contract. After analyzing the proposal, the SBA will negotiate a project specific fee with the CMA. Once an agreement is reached, the SBA will issue a task order for the work and notify the Grant recipient that a contract for services must be executed and a P.O. written to the CMA for services being provided; payment to the CMA for services will be processed through the Grant recipient with the advice and consent of the SBA.

ATTACHMENT “B”

The following is a list of key personnel that could be utilized to provide the required services under this agreement.

The CMA will not make changes with respect to persons or positions listed without the prior written approval of the Grant Recipient.

NAME	TITLE

EXHIBIT C
“CERTIFICATES OF INSURANCE”

DRAFT

ATTACHMENT “D” SPECIAL PROVISIONS

1.0 PROJECT DESCRIPTION

- 1.1 The CMA shall provide Project Service as defined by the AIA-C-132 agreement as well as the Service defined by the SBA supplemental conditions to this agreement.
- 1.2 The CMA services shall be retained by task order. The CMA shall not perform services without authority by the SBA. There shall be no minimum or maximum task order.
- 1.3 A task order is defined as a written directive from the Director of Architectural Services or his designee to the CMA to perform work as stipulated in the task order scope of work for specific disciplines for a project. Task orders shall be issued to the CMA after receipt and approval of a task proposal from the CMA.

2.0 PERIOD OF PERFORMANCE

- 2.1 The Period of Performance is thirty-six (36) months from the date of this Agreement with **two (2) one-year options** for renewal.

3.0 DURATION OF CONTRACT

- 3.1 The time duration for individual projects shall be given with the task order.
- 3.2 The CMA shall be assigned projects at any time during the duration of the contract.

4.0 OPTION TO EXTEND THE TERM OF THE CONTRACT

- 4.1 The SBA may exercise its right to extend by giving the CMA written notice of its intent to extend at least thirty (30) days prior to contract expiration date listed under Item 2 of these Special Provisions.

5.0 TASK PROPOSAL

- 5.1 The services of the CMA shall be performed under the general direction of the Director of Architectural Services or his designee or designated representative pursuant to receipt by the CMA of task order.
- 5.2 Issuance of task order(s) – After review, evaluation and completion of any negotiations between the CMA and SBA representative of the CMA task proposal, a Notice to Proceed will be issued by the SBA to the CMA for execution of the services. The SBA is under no obligation to issue any task orders to the CMA and no payment shall be made to the CMA except for work performed under any approved task order.

- 5.2.2 CMA duties Pursuant to Each Task Order – The CMA shall provide Construction Management Agent Services as outlined in Part Two, Scope of Services and as described in Attachment “E” Special Provisions.
- 5.2.3 After the written Notice to Proceed is issued for a task order, the CMA shall complete the work within the time limit specified in the task order.
- 5.2.4 Decreasing scope of Task Order Work – The SBA shall have the right to reduce the scope of a task order, at any time and for any reason, upon written notice by the Director of Architectural Services to the CMA, specifying nature and extent of such reduction. In such event, the CMA shall be fully compensated for work already performed and completed under the task order prior to receipt of written notification of such reduction.

6.0 PRICING

Pricing of task orders as well as work performed under the Changes article will be priced according to the following guidelines:

- 6.1 Pricing shall be based on lump sum fixed prices for performance of the work contained in the particular task order. The pricing of each task order will consist of pre-negotiated labor billing rates for the various disciplines involved multiplied by work hours negotiated for the services required for each task order. Negotiated labor billing rates will be used for the base year and escalated rates for the options years in accordance with the negotiated agreement for this base contract.
- 6.2 Other Direct Costs such as , materials and supplies will be negotiated at the pricing of the task order. Travel related costs shall be in accordance with Federal Transit Administration guidelines.
- 6.3 All Work shall be performed with personnel in titles and with rates as specified in the agreement

7.0 BILLING AND PAYMENT

Applications for Payment shall be prepared and submitted in one original and three copies (and contain the following information: date, contract and task order number (if any), item numbers, description of services, quantities, unit prices and extended totals. Service contract invoices require the period of performance being invoiced to be included in the contract terms. Final invoices must clearly be marked “FINAL” and cite the amount of the contract, amount previously paid, and the balance due.

8.0 SCHEDULES, MEETINGS, AND REPORTS

Schedules are to be provided and may be supplemented by scheduling requirements set forth in individual task orders. Periodic status reports on all task orders shall be submitted monthly in accordance with the Scope of Services. Quarterly Meetings between the SBA Director of Architectural Services or his designee and the CMA shall be held to review progress and resolve any problems which may have arisen during performance.

9.0 ORDERING

- 9.1 Services to be furnished under this contract shall be ordered by issuance of task orders from the Director of Architectural Services or his designee
- 9.2 All task orders are subject to the terms and conditions of this contract. In the event of a conflict between the task order and this contract, the contract shall control. The task order may contain supplements to the Scope of Services.
- 9.3 If mailed, a task order is considered “issued” based upon the effective date noted on the task order.
- 9.4 Task orders will include the following information:
- Effective date of the order
 - Contract number and task order number
 - Description and applicable reference to Scope of service and Supplemental Scope (if required)
 - Firm fixed price negotiated amount with identification of disciplines for billing purposes
 - Schedule and identification of deliverables
 - Accounting and appropriate data
 - Any other pertinent information
 - Authorizing signature of Director of Architectural Services

10.0 REQUIREMENTS CONTRACT

- 10.1 This is a requirements type contract for the services specified, and effective for the period stated in the contract.
- 10.2 Except for any limitations on quantities in the Order Limitations clause or in the schedule, there is no limit on the number of orders that may be issued. The SBA may issue orders to require delivery to multiple destinations or performance at multiple locations.
- 10.3 Any order issued during the effective period of the contract and not completed within that period shall be completed by the CMA within the time specified in that order. The contract shall govern the CMA’s and SBA’s rights and obligations with respect to the order and to the same extent as if the order were completed during the contract’s effective period.
- 10.4 It is the intention of the SBA to retain the services of the CMA to provide services during all Pre-Construction and Construction Phases of work to the SBA for the assigned project(s).
- 10.5 The CMA shall be an impartial agent representing the SBA and Grant Recipients’ interests during the entire project development process. This Task Order Agreement will be terminated for cause if it is determined by the SBA that the SBA and/or Grant Recipient best interests are not being served by the CMA at anytime during the contract agreement.

**ATTACHMENT “E”
BILLABLE RATES**

From _____ **To** _____

TITLE	BILLING RATE

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** - Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:
STATE OF WEST VIRGINIA

VENDOR

Spending Unit: _____

Company Name: _____

Signed: _____

Signed: _____

Title: _____

Title: _____

Date: _____

Date: _____